

HOUSE FINANCE COMMITTEE

March 3, 2022

9:01 a.m.

9:01:22 AM

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 9:01 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative DeLena Johnson  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen (via teleconference)  
Representative Steve Thompson  
Representative Adam Wool

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Representative Mike Prax, Sponsor; Representative George Rauscher, Sponsor; Ryan McKee, Staff, Representative George Rauscher; Caroline Schultz, Policy Analyst, Office of Management and Budget, Office of the Governor; Claire Gross, Staff, Representative Jonathan Kreiss-Tomkins; Nancy Meade, General Counsel, Alaska Court System; Kelly Howell, Special Assistant to the Commissioner, Department of Public Safety.

PRESENT VIA TELECONFERENCE

Corey Bigelow, Operations Manager, Permanent Fund Dividend Division, Department of Revenue; Kara Moriarty, President and CEO, Alaska Oil and Gas Association; Colleen Glover, Director, Tax Division, Department of Revenue; Representative Jonathan Kreiss-Tomkins, Sponsor; Lisa

Purinton, Bureau Chief, Criminal Records and Identification, Department of Public Safety.

SUMMARY

HB 158 PFD CONTRIBUTIONS TO GENERAL FUND

HB 158 was HEARD and HELD in committee for further consideration.

HB 246 ACCESS TO MARIJUANA CONVICTION RECORDS

HB 246 was HEARD and HELD in committee for further consideration.

HB 281 APPROP: OPERATING BUDGET/LOANS/FUNDS

HB 281 was SCHEDULED but not HEARD.

HB 282 APPROP: MENTAL HEALTH BUDGET

HB 282 was SCHEDULED but not HEARD.

HB 287 A: OIL & GAS TAX CREDIT FUND APPROP.

HB 287 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda.

#hb158

HOUSE BILL NO. 158

"An Act relating to contributions from permanent fund dividends to the general fund."

9:01:58 AM

9:02:09 AM

AT EASE

9:02:29 AM

RECONVENED

REPRESENTATIVE MIKE PRAX, SPONSOR, explained that the bill would give individuals the opportunity to give their share of the Permanent Fund Dividend (PFD) payment back to the

state if they desired. The bill asked the Department of Revenue (DOR) to modify the electronic PFD application form to include a check box that would allow applicants to contribute up to the full value of the dividend in increments of \$25.

Representative LeBon asked if individuals would be able to designate which agency the funds would go to.

Representative Prax answered in the negative. He explained that the that funding would go to the General Fund.

Representative LeBon asked if the sponsor believed it would be more popular if Alaskans could donate the money to a specific department such as the Department of Public Safety.

Representative Prax agreed. He believed the idea may be worth considering in the future. His goal for the bill was to make the basic option available to see how it worked.

Vice-Chair Ortiz shared that he had been approached by several constituents who would like to see their PFDs invested in a separate Permanent Fund account that would grow over time and would be available to them at some point in the future. He asked the bill sponsor if he had explored the idea.

[9:06:08 AM](#)

Representative Prax answered that he had looked into it a bit. He stated that it sounded like a great idea; however, it would be legally challenging. He explained that it meant there would be money in the Permanent Fund that belonged to the public and individuals. He thought was a good idea, but it was complicated to set up.

Representative Thompson thought he would likely come up with an amendment to allow people to donate the funding to the General Fund or to the principal of the Permanent Fund. He asked the sponsor for his opinion.

Representative Prax did not object to the idea. He stated the money belonged to the donor so they should get to choose where it went. He explained that the PFD funds were in the General Fund prior to going to individuals. He did

not know about the mechanics of transferring the funding back into the Permanent Fund.

Representative Thompson asked for more detail about his idea.

Representative Prax answered that the concepts proposed by Representative Thompson and Representative LeBon may be something worth investigating in another bill. He wanted to see if the basic bill was a success first. He believed the legislature should consider building on the idea after determining how the basic concept worked.

9:08:30 AM

Representative Wool asked how much Representative Prax thought people would donate back. He asked if there was an approximation, or if the sponsor was "throwing it to the wind."

Representative Prax answered it was hard to guess and he was throwing it to the wind. He detailed that the previous year, 105 people knew they could donate their check back to DOR by endorsing the check and mailing back to the department. He noted that in order to return the funds to DOR by mail, recipients had to remember to request a paper check when applying for the PFD. He anticipated the number would increase because applicants determined what to do with their PFD in March, at the same time the legislature was discussing the budget. He noted that quite a few people had stated they would rather have services than the check. He explained that the bill would make it easier for individuals to do. He did not believe people realized it was possible to return their PFD to the department at present.

Representative Wool referenced Representative Prax's statement that individuals would be deciding what to do with their PFD at the same time the legislature was discussing the budget. He noted there was a spring forecast coming up that would likely be advantageous to Alaska's pocketbook. He thought people may choose to accept their full PFD if there was plenty of money coming into the state. He asked if the bill was only aimed at giving people the option [to return the funds to the state]. He asked if the bill was also aiming to retrieve some of the

expenditures. He asked the sponsor if he believed there would be a substantial amount of money redeemed.

Representative Prax believed the funds redeemed as a result of the bill would be enough to cover the costs of setting up the computer program to accept the funds. He stated that any operating costs would be de minimis once the program was set up. From a business perspective, he believed it would be worth putting money aside to advertise the option to people. He explained that as long as the operating costs were covered, there would be a profit for the state.

Co-Chair Merrick noted that Representative Rasmussen had joined the meeting via teleconference.

9:11:56 AM

Representative Thompson was interested in the people who received a paper check and sent it back to DOR. He highlighted that once a person received a paper check, a tax liability was created. He asked if people had to pay taxes on the returned funds. Alternatively, he asked if the State of Alaska was considered a nonprofit donation. He highlighted there was an annual limit on donations that could be claimed against a person's taxes.

Representative Prax confirmed that individuals [returning the funds] were liable for the tax. He noted committee members' packets included a legal memo specifying it appeared the donation would be considered tax deductible. The donation back to the state was considered a tax deduction and how it applied to any individual was a conversation between the individual, their accountant, and the IRS.

9:13:24 AM

Representative Johnson thanked the bill sponsor for introducing the legislation. She expressed appreciation for bills that came from the people. She asked if the option provided by the bill would be another check box like Pick.Click.Give or the education lottery. She asked if there were any associated costs.

Representative Prax answered that the box would appear at the bottom of the list of the Pick.Click.Give choices on the application screen.

Representative Johnson asked how much it would cost to add the option.

Representative Prax replied the option would appear as another check box below the Pick.Click.Give list. He detailed that the fiscal notes estimated a programming and set up cost of \$43,600. He elaborated that the bill included a 7 percent charge similar to the other Pick.Click.Give contributions. He thought it could be an amendment for consideration. He did not believe there would be an expense after setting the option up.

Representative Carpenter asked about the difference between not applying for the PFD and receiving the PFD and returning it.

Representative Prax answered that if someone did not apply PFD, their share was distributed between all the other applicants. He explained that opting not to apply for the PFD did not accomplish the objective of directing the money back to the General Fund.

[9:16:37 AM](#)

Representative LeBon asked if the contribution back to the General Fund would avoid a tax liability. He wondered if a person made a taxable donation they never really took possession of the funding and the funds never really left the state.

Representative Prax answered that it was difficult to estimate the number of people who wanted to give their check back without asking them first. He explained that if a person said they wanted to give the funds back, they had technically taken possession of payment even though it never reached their hands.

Representative Carpenter asked how many people were eligible for the PFD who did not apply.

Representative Prax answered that the number was around 15 percent. He did not have the figure on hand.

Co-Chair Merrick asked if DOR could answer the question.

COREY BIGELOW, OPERATIONS MANAGER, PERMANENT FUND DIVIDEND DIVISION, DEPARTMENT OF REVENUE (via teleconference), replied he was uncertain the division had the information. He explained that the PFD Division received approximately 670,000 applications annually. He noted that duplicate applications could reach up to several thousand. He reasoned it could be possible to determine the number based on the number of applicants compared to the number of Alaskan residents. He did not have the information on hand.

Representative Carpenter considered individuals who chose not to apply for the PFD because they were philosophically opposed or because they thought the funds remained with the government. He thought the individuals may choose to use the program to ensure the funds went to state government. He did not believe there was a way to determine the number.

[9:20:34 AM](#)

Co-Chair Merrick OPENED public testimony.

Co-Chair Merrick CLOSED public testimony.

[9:21:03 AM](#)

Co-Chair Merrick asked the department to review the fiscal note.

Mr. Bigelow provided a brief summary of the fiscal note. He stated that the bill would enable Alaskans to direct their PFD funds to the state's General Fund during the electronic application process. He detailed that the contribution would be available for individuals filing for themselves versus individuals filing on behalf of another person. The department expected the latter to be excluded. The department estimated it would take 150 hours to modify the online application and an additional 150 hours to make changes to the "My Info" portal where Alaskans logged on to view their application history and status. He explained that all of the hours pertained to the initial build and the PFD Division would absorb any ongoing costs for administering the program for all subsequent years.

Co-Chair Merrick set an amendment deadline for March 7 at 5:00 p.m.

HB 158 was HEARD and HELD in committee for further consideration.

[9:24:03 AM](#)

AT EASE

[9:24:42 AM](#)

RECONVENED

#hb287

HOUSE BILL NO. 287

"An Act making an appropriation for oil and gas tax credits; and providing for an effective date."

[9:24:54 AM](#)

REPRESENTATIVE GEORGE RAUSCHER, SPONSOR, thanked the committee for hearing the legislation. He introduced the bill with prepared remarks:

House Bill 287 provides the \$60 million that is still owed for the oil tax credits that were overlooked in the 2022 state budget. A promise made should be a promise kept and a statute written should be a statute followed. An oversight occurred for the legislators in 2021 that while trying to decide the proper funding source for the oil tax credits in the amount of \$60 million, we ended the year with an amount owed to certain companies in the oil industry that actually never got paid. HB 287 rights that wrong and pays it from the undesignated general funds. Hundreds of millions of dollars were still owed certain oil companies their portion of these oil tax credits, and the state had an agreement to repay them by making our installments each year from the budget. As we move this state forward, we must protect our credit rating and put confidence back in our investors by paying our business partners what we owe them by law, we'll do just that.

Last year we were \$60 million short and by rights we're behind in our payments today. HB 287 will reverse that by paying this overdue note.

Representative Rauscher asked his staff to review the sectional analysis.



9:27:10 AM

RYAN MCKEE, STAFF, REPRESENTATIVE GEORGE RAUSCHER, reviewed the sectional analysis (copy on file):

Section 1:

This section appropriates \$60,000,000 from the general fund to the oil and gas tax credit fund (AS 43.55.028)

Section 2:

This section specifies that the appropriation made in section 1 is for the capitalization of a fund and does not lapse.

Section 3:

This section provides that this act would take effect immediately under AS 01.10.070(c)

Mr. McKee listed other individuals available online to speak to the bill.

9:28:11 AM

KARA MORIARTY, PRESIDENT AND CEO, ALASKA OIL AND GAS ASSOCIATION (via teleconference), thanked the committee for the opportunity to provide testimony.

AOGA is the professional trade association for the oil and gas industry in Alaska and we do represent most of the companies exploring, producing, refining, and transporting oil and gas resources in our state. Our mission is to advocate for the long-term viability of the industry and one of our organization's main priorities is to constantly advocate for the industry's fiscal stability and consistency, which in this case includes a long-term payment of the roughly \$600 million in outstanding liabilities for the refundable tax credit program, which has been stated has ended, but of course the payments remain.

Just as a reminder, the legislature created the oil and gas tax credit program over a decade ago to incentivize and encourage small producers to explore and produce in Alaska. To be eligible for these credits, companies had to have less than 50,000 barrels per day of production. I always like to

clarify that companies like ExxonMobil, ConocoPhillips, and BP were never eligible for, nor did they ever receive these credits, nor would they receive any of the suggested \$60 million appropriation in the bill before you today.

Originally these credits were not cashable, but the legislature later allowed for direct cash payments after the program started and the program worked. We had a number of small companies that came to Alaska. Other existing small companies and refineries invested money in exploration projects, production enhancements, and refining upgrades and expansions. These credits for those that remember, were originally designed to bring new companies to Cook Inlet. Especially, at a time when the Southcentral region was preparing for natural gas shortages and were conducting rolling brownout drills throughout the Railbelt. Not only did the state benefit from investors coming to Alaska, like Hilcorp did, to Cook Inlet ten years ago, but the state also obtained data from companies they would not have been privy to before because companies needed to provide that information to justify the expenditures to approve the credits. So, the state gained by learning more about the resources through these credits.

As the credit program was no longer feasible, given the state's unfortunate fiscal position several years ago, all of these investment-based cashable credits for the North Slope and Cook Inlet were completely phased out with the passage of House Bill 247 in 2016 and House Bill 111 in 2017. The gas storage facility and refinery credits have also sunset. This means the state no longer offers refundable or cashable oil and gas tax credits. I think it's also important to note that the money was spent by the companies prior to being eligible for these credits. So, the liability before you in this bill and the remaining balance is for work that has long been done. While there are other entities around the state that hold these credit certificates awaiting payment such as the Interior Gas Utility, almost half of my membership is impacted by this outstanding balance. Including one in-state refinery, Petro Star, which is a wholly owned subsidiary of Arctic Slope Regional Corporation, explorers like Repsol, which is a 49 percent owner of

the Pika Unit, and other small producers like Blue Crest, ENI, Furie, HEX, and Glacier Oil and Gas, are all part of the overall credit liability.

9:33:03 AM

Ms. Moriarty continued her prepared remarks:

I think the question today, as you all know, is not whether the state should have offered this tax credit program or not, but the question is really should the state pay the minimum statutory payment as outlined in AS 43.55.028 for the credits that have already been earned. Statewide, hundreds of millions of barrels of oil along with trillions of cubic feet of gas still sit in the ground waiting to be developed. Many by the very same companies influenced to invest here by the state's tax credit programs.

Even Alaska focused companies rely on owners and investors from all over the world and while prices are certainly higher today than a month ago, let alone a year ago, the fact is the industry is still trying to come out of the pandemic. Our workforce has not recovered, and we see more and more companies, unfortunately, like AIG yesterday, announcing that investors do not want to invest now or insure in the Arctic.

This is an attempt, as Representative Rauscher mentioned, to make the minimum payment whole. As we know, there was an attempt to resolve this entire outstanding debt in 2018 when the legislature passed House Bill 331, a bond program. But unfortunately, that program was deemed unconstitutional by the supreme court and so we actually had a couple of years while we were waiting for that court decision where the legislature did not fund anything at all. In positive news, the governor has included the minimum statutory payment in his budget for FY 23. We at AOGA recognize the structural fiscal challenges that the State of Alaska is facing and so we are not advocating for a full immediate payout of the credits nor for the credit program to return. But we do support the state funding the minimum statutory payment and I know many of the committee members support that as well. We

thank you for the opportunity to testify today and for your consideration of this bill.

9:35:21 AM

Representative LeBon referenced Ms. Moriarty's mention of the list of tax credit holders. He asked if there was a bank holding some of the credits.

Ms. Moriarty answered the state had updated its report earlier in the year, but she did not have it on hand. She stated it was likely a bank may hold the credits because a company may have sold its credits as a note for financing. She highlighted that the Department of Revenue (DOR) had a list of the credit certificate holders.

Representative LeBon recalled from several budget cycles past there was a bank holding some of the credits. He explained the situation meant a bank had secured a loan with the tax credits and the borrower was unable to pay the loan back, and the bank now owned the credits. He stressed that it was not a success.

9:36:56 AM

Representative Wool thought Ms. Moriarty likely could not share the companies waiting for payment. He mentioned a past document the committee had received showing prior credits paid. He detailed it was possible to interpolate about some of the companies on the list. For example, he believed there were likely some natural gas developers and providers from Cook Inlet. He asked if his statement was fair.

Ms. Moriarty confirmed there were natural gas developers in Cook Inlet that earned the credits. She did not know whether the specific developers had been paid what they were owed. She stated that DOR maintained the list and published it annually. She did not have the list on hand.

Co-Chair Foster stated in the past there had been significant focus on some of the companies being from out of state as opposed to Alaskan. He pointed out that in the current year there had been at least one Alaskan company come to legislative offices to let legislators know there were Alaskan companies on the list.

9:38:20 AM

Representative Josephson asked if any AOGA members had ever indicated a preference on the payment source from the state Treasury.

Ms. Moriarty replied that AOGA members did not have a preference in regard to the fund source. She understood the funding source had been part of the debate the previous year when the legislature had been trying to determine how to get the credits paid. She informed members that AOGA recognized and appreciated the intent [to pay the credits] was there.

Co-Chair Merrick stated she had offered an amendment in the past to pay the credits in full, from the Constitutional Budget Reserve (CBR). She asked about the rationale for paying the credits at present versus the previous year.

Representative Rauscher recalled the difficulty the legislature had trying to get the \$60 million in credits paid the previous year. He detailed that paying the credits had bounced back and forth between different ideologies over the funding source. He explained that the chosen funding source had ultimately been the CBR, which had caused a problem because many House members believed the CBR was a savings account that had been robbed from \$17 billion down to \$1.5 billion and lower. He elaborated that those members also believed that the money taken from the CBR was never paid back as it should be according to statute. He believed the difference in ideologies over the CBR fund source had caused the payment to not be made. He believed there had been an idea that there would be a correction on the Senate side, but that had not occurred. He speculated using the CBR as the fund source may pose the same problem in the current year. He explained it was the reason he had selected a different funding source in the proposed legislation.

9:41:15 AM

Co-Chair Merrick asked if the ideology was that keeping money in savings was more of a priority than paying the tax credits.

Representative Rauscher disagreed with the phrasing. He believed if the state had a checking account with

sufficient funding to pay, it should be used as the funding source instead of a savings account that had not been repaid as specified by law.

Vice-Chair Ortiz stated his understanding the bill would provide a makeup payment for the [FY] 22 payment that had not been made. He remarked that the \$60 million funding in the governor's budget was the FY 23 payment. He asked for verification the intent of the bill was to makeup for the payment that had not been paid the previous year.

Representative Rauscher confirmed the funding in the bill made up for a payment that had never been made in FY 22. He clarified that the funding in the governor's budget was for the FY 23 payment.

9:43:28 AM

Co-Chair Merrick remarked that Co-Chair Foster noted the FY 23 operating budget contained \$199 million to pay the credits.

Representative Wool noted that the committee had put some time into oil and tax credits the previous year. He believed for the most part, the committee had been supportive of the concept. He recalled that at one point the funding would have come from Alaska Industrial Development and Export Authority (AIDEA) reserves and he believed an amendment proposed by Representative LeBon had ultimately passed. He stated that at the end of the day the committee wanted to pay the credits. He stated the legislature had drawn from the CBR on multiple occasions. He recognized that technically the CBR was owed over \$10 billion. He referenced Ms. Moriarty's testimony that credit holders did not care where the funds came from. He had been somewhat surprised that many people had voted against the bill on the floor the past year. He pointed out that some of the companies were Alaskan, some were natural gas companies in Cook Inlet, and some employ many Alaskans. He highlighted the Statutory Budget Reserve (SBR) was another savings account that had been used in the past to pay the PFD. He asked if the same ideological issue existed around the SBR as with the CBR.

9:45:37 AM

AT EASE

9:47:43 AM

RECONVENED

Representative Wool clarified his previous question. He explained there had been objection to paying the oil tax credits from the CBR the previous year. He recalled the majority of the House Finance Committee members had wanted to pay the credits. He asked if there would be a savings account problem if the funds were taken from the SBR in the future. He noted things had been paid from the SBR in the past.

Representative Rauscher answered that he had not considered the idea. He did not know the current balance of the SBR and did not know what was funded by the SBR in the current budget. He did not have enough information to answer the question currently, but he would follow up.

Representative Carpenter directed a question to DOR. He understood there was a forthcoming spring revenue update. He stated his understanding that oil prices and revenue were up. He stated the legislature could continue to posture about what had taken place in the past or it could ask whether there was sufficient funding in the General Fund with higher prices of oil to pay debts from general funds. Alternatively, he wondered whether debts needed to be paid from savings due to insufficient general funds.

9:50:03 AM

COLLEEN GLOVER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), replied that the funding and the budget was not really a Tax Division question. She detailed that DOR had published a revised forecast showing general fund receipts were expected to be much higher in FY 22 than projected in the fall forecast. She believed the question pertaining to the budget could be better answered perhaps by the Office of Management and Budget.

Representative Carpenter asked if there was \$60 million in additional revenue in excess of the amount projected in the fall forecast that could be used to pay debts from the previous year.

Ms. Glover replied affirmatively. She encouraged members to look at projections from mid-February on the DOR website.

She reported that updated cashflows projected additional FY 22 General Fund revenues of \$572 million.

Representative Carpenter stated the philosophical question was whether to pay the state's debts from the General Fund or savings account. He reasoned the state had plenty of money to pay the debt from the General Fund.

Representative LeBon clarified that he had supported the amendment to pay the \$60 million out of the CBR, but he believed the co-chair had offered the amendment. He asked if it was inappropriate for a member of the committee to amend HB 287 to pay the \$60 million from the CBR.

Representative Rauscher replied that he did not oppose the option; however, it had not worked the last time. He was trying to eliminate the possibility of treading the same ground over and getting the same result. He referenced an earlier comment he had made that the previous year legislators who had voted against the use of the CBR funds had relied on the Senate to come up with a fix, which had not occurred. He stated he had used the word "oversight" related to the Senate. He apologized for any potential misunderstanding about his remark.

[9:53:27 AM](#)

Representative LeBon directed a question to Ms. Moriarty. He highlighted that the FY 23 budget currently included almost \$200 million for oil and gas tax credits. He asked if the industry believed the dollar amount included the missing \$60 million from FY 22.

Ms. Moriarty answered that the \$199 million in the governor's FY 23 budget was the minimum calculation for FY 23 and did not include the unfunded \$60 million from FY 22.

Co-Chair Foster stated his understanding that the minimum amount could increase because it was driven by formula. He explained that if the numbers in the spring forecast were higher than the fall forecast, the amount owed for oil tax credits in FY 23 could potentially be much higher than the \$199 million currently in the operating budget. He asked Ms. Glover if his understanding was accurate.

Ms. Glover answered that the formula was based on projected production tax revenue. She explained that as the



department was projecting increased tax revenue it would [increase the amount in credits owed]. She relayed that the current projections, released mid-February, were shown on the department's website. She elaborated that the updated number for the FY 23 tax credits owed was \$263 million. She informed the committee that the number could potentially increase under the upcoming spring forecast.

9:56:11 AM

Vice-Chair Ortiz asked if including the \$60 million for the amount owed from the previous year in addition to the FY 23 amount owed for tax credits in the operating budget would accomplish the intent of HB 287.

Representative Rauscher agreed.

Representative Carpenter stated his understanding that any formulaic increase in the amount owed due to an increase in revenue would only apply to the statutory minimum for FY 23. He asked for verification the increase would not apply to the amount owed from the past year.

Ms. Glover answered that the statutory formula was for the appropriation and the appropriation amount was at the legislature's discretion. She explained it was at the legislature's discretion to choose to add \$60 million on top of the amount owed based on the spring forecast. She referred to a letter mentioned earlier in the meeting that had been provided to the legislature the previous month and showed the current outstanding tax credit balance at about \$565 million.

Representative Carpenter stated his understanding that if there was a larger number for FY 23 tax credits, the legislature would still have to appropriate an additional \$60 million to cover the past year's shortfall.

Ms. Glover replied affirmatively. She explained that the formula for FY 23 only included the amount for FY 23. She highlighted the \$263 million owed for FY 23 based on the updated February numbers and detailed that the \$60 million would need to be added to the figure if the legislature wanted to make up the funds from the previous year.

Representative Carpenter asked Ms. Moriarty if industry cared how the credits were paid via HB 287, the supplemental budget, or the current budget bill.

9:59:44 AM

Ms. Moriarty replied in the negative. The industry did not have a preference related to the funding source or mechanism. She explained that the industry had long advocated for the minimum statutory amount to be paid annually.

Co-Chair Foster provided a summary pertaining to the payments owed. He detailed that the \$60 million for FY 22 was set; therefore, even if prices were up in the current year, it did not mean the FY 22 number would increase. He elaborated that the current committee substitute for the operating budget included the governor's original request of \$199 million for FY 23. Once the spring forecast came out in mid-March, any member could choose to offer an amendment either in committee or on the House floor (depending on the location of the budget bill) to increase the number from \$199 million to \$263 million. Likewise, legislators could also offer an amendment to bump up the FY 23 amount to account for the \$60 million.

Representative LeBon asked Ms. Glover for the current value of the CBR.

Ms. Glover responded that she would follow up with the information.

Representative LeBon replied that it was not necessary for Ms. Glover to follow up with the information. He referenced earlier comments made by Representative Rauscher indicating there had been some voter remorse by some legislators (who had voted against the CBR draw to pay the tax credits) over the expectation that the Senate would fix the oil and gas tax credits payment.

Representative Rauscher thought Representative LeBon was reading more into the statements he had made previously. He believed the vote likely expected the Senate to fix the situation. He was not certain where Representative LeBon's word "remorse" came from and did not believe it fit. He added that he agreed with part of Representative LeBon's statement.

Representative LeBon stated that he had supported paying the \$60 million in credits from the CBR in the past. He understood it had not been the preferred funding source because it had failed on the House floor. He communicated his preference and support for returning the funding source to the CBR.

10:03:28 AM

CAROLINE SCHULTZ, POLICY ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, answered that based on the DOR forecast that had been updated in February, the estimated CBR end balance for FY 23 was about \$1.9 billion and \$2.9 billion in FY 24.

Representative Josephson asked what made the projected numbers grow from \$1.9 billion to \$2.9 billion.

Ms. Schultz answered a considerable reason for the projected growth was the increased revenue projection included in the February numbers. She reported that the revenue projection had increased from the fall forecast by approximately \$1 billion. She elaborated that given the CBR estimate was based on the governor's budget, the \$1 billion increase in revenue was functionally projected to be deposited into the CBR.

Representative Josephson asked if it was because until it was allocated somewhere else, it would be swept. He surmised it assumed the legislature would leave the funds in the General Fund because the legislature had not communicated otherwise.

Ms. Schultz agreed.

Co-Chair Merrick thanked Representative Rauscher for his presentation.

HB 287 was HEARD and HELD in committee for further consideration.

10:05:30 AM

AT EASE

10:13:50 AM

RECONVENED

#hb246

HOUSE BILL NO. 246

"An Act restricting the release of certain records of convictions; and providing for an effective date."

10:13:54 AM

REPRESENTATIVE JONATHAN KREISS-TOMKINS, SPONSOR (via teleconference), introduced the legislation that aimed to reflect the new law and consensus in Alaska around the decriminalization of marijuana and removed the convictions of simple marijuana possession from public view. He reported that the legislation had attracted support from both sides of the isle and his office had worked closely with the administration. He believed it was a timely policy change to make, especially as the state settled into the new post-marijuana decriminalization.

10:15:44 AM

CLAIRE GROSS, STAFF, REPRESENTATIVE JONATHAN KREISS-TOMKINS, explained the bill had two distinct parts, which addressed the two primary ways employers and members of the public access criminal justice information in Alaska. The first part pertained to the Alaska Court System. She highlighted that the two parts were separate, one was automatic and the other required a petition process. She detailed that the court system would automatically remove the very specific type of minor marijuana conviction from CourtView at no cost. She noted the department would be able to absorb the cost. The bill applied to convictions where a person was convicted for less than one ounce of marijuana, they were 21 years of age or older at the time of the offense, and they were not convicted of any other criminal charges in that case. She explained the specific convictions had been selected due to some CourtView technology protocol requirements. She explained the court system could not take one charge or conviction out of a case on CourtView, it had to process one entire case at a time.

Ms. Gross addressed the second portion of the bill pertaining to the Department of Public Safety (DPS). She detailed that DPS maintained and worked from the Alaska Public Safety Information Network (APSIN) database. She

explained that employers could use the APSIN database for formal background checks. For example, the system could be accessed by employers outside the state, for jobs requiring state licensure, for people applying to work in law enforcement, and other. She elaborated that any employers could request an "any persons" report from DPS. She explained that individuals with past convictions that met the aforementioned requirements could petition DPS to have the specific information in their background checks shielded from view. She clarified that the information would not be officially sealed, but shielding the information was functionally the same thing. She noted that any member of the criminal justice system would continue to have access to the information.

Ms. Gross relayed that DPS would need one full-time employee for one year at a cost of approximately \$100,000 in order to work through the cases and respond to petitions. She reported there was some cost associated with updating the APSIN software to access the records and shield them from view.

10:20:18 AM

Representative Josephson asked if it would be a friendly amendment if the bill covered 18 to 20 year olds even though the law did not protect their right to smoke marijuana.

Ms. Gross replied that the bill aimed to address things that Alaskans had determined were no longer a crime. She stated the problem with including people under the age of 21 was it was still a crime in Alaska; therefore, it was not something the sponsor's office wanted included in the bill.

Representative Josephson noted he would like to ask the court system a question at some point.

Co-Chair Merrick replied affirmatively.

Representative LeBon stated in his "banking days" he had a customer that required drug (including marijuana) testing for his employees due to the nature of his business. He asked if the employer should know about a person's background and use of marijuana when going into a hiring process where a company policy was in place to test for

marijuana use (whether the use of marijuana was legal or not).

Ms. Gross replied that under the legislation, the answer was no. She reasoned that being high at a job or testing positive for marijuana at a job where it was not allowable was a different situation than a past minor conviction.

[10:22:24 AM](#)

Representative LeBon appreciated the answer. He asked if it would be fair for an employer to ask a future employee if they had a prior legal conviction or incident of use when the employer had told the future employee there would be testing going forward.

Ms. Gross asked for clarification on the question.

Representative LeBon was trying to think the bill through from the perspective of a private employer with a drug testing program due to the nature of the work where a sober workforce was important. He asked if it was relevant information for the hiring process to know about an applicant's past or to provide notice to a potential employee the business would be testing for marijuana use. He remarked that his comment was more of a statement than a question.

[10:23:49 AM](#)

Vice-Chair Ortiz asked if he was correct in understanding that for persons under the age of 18 nothing about a person's criminal record ever met public view.

Ms. Gross deferred the question to the court system.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, answered that if someone under the age of 18 was accused of a crime, the Division of Juvenile Justice generally handled the case. She elaborated that the proceedings were part of juvenile delinquency, and the cases were confidential. She explained that the court system did not file the information on CourtView and generally people other than law enforcement did not have access to the information.

Vice-Chair Ortiz stated his understanding that under the legislation, people between the ages of 18 and 21 would not

be protected and their records would continue to be available in the current form. He asked if the court system would be averse to providing an avenue to shield the records for the specific age group.

10:26:45 AM

Ms. Mead answered that the court system would not take a position on a policy call made by the legislature. For example, several years back, the legislature decided that minor consuming alcohol cases should not appear on CourtView if they were not charged with other criminal cases (because of the limitations on how the court system could and could not post things on CourtView). The court system followed the policy and minor consuming charges for individuals under the age of 21 were not posted on CourtView. She relayed the court system would be able to do the same for marijuana use if it was the policy call made by the legislature.

Representative Josephson stated he had come to have more sensitivity about the court's rights over CourtView and whether it exists at all because the tool belonged to the court system, not the legislature. He considered the scenario where the bill passed and directed the court system to do or not do certain things with CourtView. He asked if it would be viewed by the court system as an encroachment on its jurisdiction.

Ms. Mead appreciated the sensitivity. She stated it depended on the level of the infringement on CourtView. She detailed that CourtView was the court system's case management system and the court made numerous decisions about the database as its own policy. She elaborated that starting in 2015 the legislature required any criminal case ending in dismissal or acquittal to be removed from CourtView. She informed the committee it had been a strong policy at the time. She expounded that the supreme court had not simultaneously considered the same sorts of policies and the court system did not consider it an infringement because it had been easy to do and there was a strong view on the part of the legislature that it should happen. She explained that the current bill would be worded fairly similarly and globally the court system could remove things from CourtView if the legislature desired. She noted it was not currently an issue the supreme court was focused on. She remarked it would be different if the supreme court

was in the midst of considering changes to CourtView in a more global manner or wanted to make a review of everything on or off of the database. She explained that during that time period she may have a different reaction to the legislature stepping in and making some of the decisions being considered by the court.

Representative Josephson asked if the court system could decide it no longer wanted to have the CourtView system.

Ms. Mead answered affirmatively.

10:30:23 AM

Representative LeBon remarked that Alaska was not the only state to legalize the use of marijuana. He asked if it was a trend among other states that had legalized marijuana use to clear the court records of prior use as described in the bill.

Ms. Mead replied that Ms. Gross had data on the topic.

Ms. Gross replied that the majority of other states that had legalized marijuana had enacted a much broader version of something like HB 246. She explained that other states were excusing felonies and reducing charges. She elaborated that many states that had [the legalization of marijuana on] a ballot initiative had included the changes [similar to those proposed in the current bill] automatically. She stated that Alaska was behind the times compared to other states. She added that the majority of states that had not legalized marijuana had taken some type of step in the direction taken by the bill.

Representative LeBon was interested in a summary of states that had backed off of the reporting and had cleared record to understand how far behind Alaska was.

10:31:52 AM

Representative Wool asked about individuals convicted of minor marijuana crimes and not charged with another crime in the same incident. He had heard in the past there were not many standalone marijuana crimes. He understood dealing and cultivation were likely not minor crimes.



Ms. Mead clarified that the bill looked at people who were not convicted of any other charges in the case. She explained that other charges may have been filed in the case. Under the legislation, the court system would remove from CourtView, cases where possession of under an ounce of marijuana was the sole conviction in the case. She relayed the estimated number of cases that would be removed from CourtView was somewhere between 700 and 1,000. She added that defendants needed to be over 21 years of age. She noted that the bill had been around in different iterations brought by different legislators in the past. She detailed that in the past there had been a question about what happened in cases where a person had been charged with other things and it had been dealt down to marijuana. The court system had been asked for the number of the cases with no other charges. The court system had found the number to be approximately half with other charges in the case. She clarified that the current bill only applied to cases where there were no other convictions apart from the marijuana charge. She relayed that the court system could count the specific cases readily.

10:34:05 AM

Ms. Gross explained that DPS and the court system were working from different numbers because they did things differently and had different constraints related to how the data was originally stored. She explained the number was very different from the DPS side, which had identified 8,500 records in the state's criminal case history repository. She elaborated that some of the people had died and some of the people accounted for more than one of the convictions. She believed when factoring in the information, the number of actual people who would benefit from the legislation was around 8,000.

Representative Wool stated his understanding that the bill applied to minor marijuana crimes without any other convictions attached. He asked for verification that the only charge seen on CourtView was the marijuana charge and it included no other crimes such as a DUI.

Ms. Mead clarified that it was the only conviction that would be seen on CourtView. She explained that a person may have been originally charged with four things, but only convicted on the marijuana charge.

Representative Wool referenced Ms. Mead's earlier statement that minor consumption of alcohol cases (below the age of 21) were not listed on CourtView. He asked if the charges associated with minor consumption of alcohol or marijuana were similar.

Ms. Mead replied, "No." She elaborated that minor consuming alcohol was a minor offense and not considered a crime. She explained that the offense was a violation carrying a ticket cost of \$500. Individuals had the ability to reduce the fine to \$250 if they did a certain training. She clarified that possession of marijuana was still a crime for individuals under the age of 21. She elucidated that the possession of marijuana was still a crime on the books under Title 11 for individuals over the age of 21, but it was a defense for individuals over 21 years of age in possession of one ounce.

[10:37:49 AM](#)

Representative Wool asked for verification that under the bill, individuals aged 18 up to 21 who were caught with possession of marijuana would not have their record expunged.

Ms. Mead confirmed that the court system would not review those cases from CourtView.

Co-Chair Merrick asked Ms. Mead to review the court system's fiscal note.

Ms. Mead reviewed the department's zero fiscal note. She detailed that the court system intended to identify the specified cases and already had a fairly global list. The department would remove cases that contained conduct that fell under the bill from CourtView. She reported that the bill sponsor agreed to a delayed effective date to allow time for the court system to implement the change without additional resources. She noted that making the removal of the cases automatic instead of via petition had been selected because it did not require additional resources. She cautioned there may be a small number of errors because sometimes the court system could identify the cases that came in under the particular subsection of possession of under one ounce of marijuana, in addition to a person's birthdate and offence date. She explained that sometimes the prosecuting authority did not provide a precise

subsection and provided a more global charge (e.g., 11.71.060 without specifying which subsection). She clarified that the particular cases would not be automatically removed from CourtView because they contain conduct other than that described in Section 4 of the bill. Under the particular circumstances, the court system may miss someone in the automatic process. She explained that the person would be able to fill out a form to notify the court system they were improperly on CourtView. The court system staff would have to assess the cases individually. She noted that if the system was flooded with forms, there may be some sort of fiscal impact in the future. She added she did not foresee it being an issue.

[10:40:25 AM](#)

Representative Josephson asked for verification that the change would not prevent law enforcement from knowing an entire history of unconvicted charges if they were looking for pattern and practice, proper propensity evidence, and MO evidence.

Ms. Mead answered that law enforcement should not be relying on CourtView for access to official criminal records in any event. She noted that law enforcement would be impacted by Sections 1 through 3 of the legislation, which did not pertain to CourtView. She noted that law enforcement would still have full access to the records. Sections 1 through 3 would only shield the records from the "any persons" requests.

[10:41:23 AM](#)

Co-Chair Merrick asked the Department of Public Safety to review its fiscal note.

KELLY HOWELL, SPECIAL ASSISTANT TO THE COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, relayed that DPS, through an analysis of the records contained in APSIN, identified approximately 8,500 records that were standalone convictions as classified in the bill. She elaborated that because DPS could not estimate how many of the individuals would come forward to request that the information be prohibited from disclosure, DPS would request to hire a temporary position to enable the department to deal with the incoming requests and to proactively research records in order to expedite requests from individuals to prohibit

the information from disclosure in certain background reports. The department would request \$184,200 UGF in the first year to cover personal services and the necessary programming changes to APSIN to prohibit release of the information. The cost in the second year would be \$121,200 in personal services costs for the position and associated overhead costs.

10:43:40 AM

Representative Josephson asked for the reason between the difference in the 700 to 1,000 cases [projected by the court system] and the 8,000 [projected by DPS].

Ms. Mead replied that the court system was counting cases that were filed under the specific subsection of the illegal marijuana law (AS 11.71.060) specifying that possessing under one ounce of the substance was a crime. She clarified that if the case came into the court system charging AS 11.71.060(a)(2)(a), the court system would remove the case, given it was the conduct the bill wanted shielded from CourtView. She elaborated that the law had changed a number of times over the years. For example, in the 1980s the marijuana possession law specified it was legal to possess up to half a pound of the substance. She detailed if the court system had a case in its records where a person had been convicted for possessing over half a pound, the case would not be removed from CourtView under the legislation because the person may have been in possession of seven ounces. She expounded that a person may come forward requesting the department to look at the case if they had only been convicted of possessing up to one ounce. She explained the case would be removed [from CourtView] if it was found to meet the criteria. She clarified the department's estimate only counted cases it was certain fell within the bill's specifications.

Ms. Howell explained the reason for the discrepancy in between the court system and DPS numbers. She detailed that APSIN was the state's criminal history repository and contained official records of a person's criminal history. Out of an abundance of caution, the department had identified and included a number of cases that could meet the criteria in the bill. The cases were standalone convictions for possession of marijuana. She highlighted that the law had changed many times and the department did not know without conducting further research whether a

person's particular conviction would meet the criteria in the bill; therefore, the department had identified any record that could potentially fall under the bill (including state convictions and municipal offenses). She added that the department's bureau chief for Criminal Records and Identification was available online to speak as the subject matter expert on APSIN and criminal history records.

10:47:07 AM

LISA PURINTON, BUREAU CHIEF, CRIMINAL RECORDS AND IDENTIFICATION, DEPARTMENT OF PUBLIC SAFETY (via teleconference), confirmed Ms. Howell's prior statement that the major discrepancy between the court system and DPS numbers was the difference between having the specific subsections as Ms. Mead had identified versus the more general version of AS 11.71.060 without any reference to subsections. She explained those cases would have to be individually researched by DPS to determine if the criteria had been met as outlined in the bill for preventing the records from being displayed in an "any persons" background check request. She highlighted that the DPS data went much further back than the court's data. She believed the court was limited to going back to around 2007, while DPS included all historic marijuana conviction records that could potentially fall within scope.

Ms. Mead clarified that initially the court system had gone back to 2005 when all of the courts were on CourtView and records were most reliable. She noted that the bill had started several years back. Since that time, more information had been added to CourtView. In general, the court system identified about 700 cases from 2005 forward. The cases going back to 1990 accounted for the slightly higher number.

Co-Chair Merrick asked for the bill sponsor about the catalyst for the bill.

Representative Kreiss-Tompkins replied that the idea had been discussed in past legislatures since the ballot initiative decriminalizing marijuana had passed a number of years back. He explained that the issue had always been on his radar and the action seemed very reasonable, especially as other states around the country had gone much farther than the scope of the bill. He added that the bill

reflected a calibration toward what he hoped could attract maximum support from the legislature and pass. He would be pleased to see a greater scope, but he had matched the bill to what he believed were the political realities in the building. He believed the bill made a lot of sense given how marijuana had evolved over the past decade and had been changed in the state's criminal statutes. He viewed the action taken by the bill as a commonsense step.

10:50:45 AM

Vice-Chair Ortiz asked if there was a difference in the public's accessibility of records shown on CourtView versus in the DPS APSIN database.

Ms. Howell answered that APSIN was not accessible by the general public.

Representative Carpenter was concerned about rewriting history and the inability for employers to access past records from the court system for prospective employees. He understood it was an effort to destigmatize something that had been illegal and was now legal. He provided a hypothetical scenario where the speed limit increased from 55 miles per hour (mph) to 65 mph. He asked if individuals who had received a speeding ticket when the speed limit was lower should no longer have the speeding violation on their record. He explained that as an employer, he would look at the record and determine that when the speed limit had been 55 mph the individual had a violation. He explained it provided information about their following of the law. He asked if there were instances where other laws had changed. He understood it was a policy call, but he wondered if there were instances where speeding tickets had been removed from CourtView because of speed limit changes or other violations, misdemeanors, or felonies had changed and therefore records had been removed from CourtView. Alternatively, he asked if the bill was an isolated case.

10:53:22 AM

Ms. Mead answered that the short answer was "no" with respect to CourtView. She explained that when laws changed there was not a policy or law directing the court to remove entries on Court View. The bill would be unique in that regard. She pointed out that the court system was neutral on the bill. She highlighted that the legislation was not a

full expungement bill and did not destroy records. She noted that law enforcement would continue to have full access to the information. She explained that based on what the legislature had done in the past, the bill followed the pattern of saying that the cases would be removed from the publicly available internet site CourtView. The change would mean people in their homes could not easily and readily access the material for free. She clarified that the action would not eliminate the court record and a person could still access the information at a courthouse.

Representative Carpenter stated he may have used the word "expungement," but it was not his intent. He recognized the bill removed something from public view and it was a destigmatization of a past offense.

10:54:48 AM

Vice-Chair Ortiz stated his understanding that traffic citations were removed from a person's record for insurance companies and other after a period of time. He did not believe traffic violations went back any further than two or three years if a person had a clean traffic record. He thought it may explain why the concern expressed by Representative Carpenter may not apply in relation to the bill.

Representative Carpenter stated, "Not a representative of any of the insurance companies or whatever the case might be, that sounds like a policy for that particular institution." He knew that CourtView had past violations that were not removed after a period of time.

Ms. Mead confirmed that Representative Carpenter was correct. The court system did not have a time period after which it removed any cases from Court View. She stated that a speeding ticket issued by the state would still be on CourtView.

Representative Josephson agreed with Representative Carpenter's position. For example, a trucking company may want to know for its own liability what a person's history was. He believed under the bill the information would still be accessible to an employer. He stated that Representative Carpenter's question was well taken to inquire whether other things with a statutory change were removed [from CourtView]. He would be more comfortable with the bill if

the charges were standalone. He explained there were cases where a person had three or four counts and they were all dismissed. He explained that more often than not when there were three or four counts, even though they were dismissed, there was a bit of smoke there, while there may not have been a fire. He explained that attorneys and employers tried to do research as inexpensively and quickly as possible. He noted that the individuals did not want to have to go to a courthouse to file a motion for everything that was not available on CourtView. He pointed out that family and criminal law attorneys and those working on restraining order cases, wanted as quick access as possible to the entire history of a person. He stated that an attorney learned all types of things and found witnesses with the method. He would be more comfortable with a standalone misconduct involving a controlled substance (MICS 6) charge because it was clearly an isolated case without tangents.

Co-Chair Merrick thanked the presenters.

HB 246 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the schedule for the following meeting.

#

ADJOURNMENT

[10:58:55 AM](#)

The meeting was adjourned at 10:58 a.m.